

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-002344

06/10/2011

HONORABLE THOMAS L. LECLAIRE

CLERK OF THE COURT
D. Benitez
Deputy

IN RE THE MATTER OF
KIM BOLLINGER

JANE O ROSS

AND

TAMMY SUE GRENIER

LAURA A LEHAN

EMMA ROSE GRENIER-BOLLINGER
NO ADDRESS ON RECORD
OWEN JACOB GRENIER-BOLLINGER
NO ADDRESS ON RECORD

MINUTE ENTRY

This matter comes before the Court on (1) Petitioner's Petition to Modify Child Parenting Time or Parenting Time and Child Support, and (2) Respondent's Motion for Relief from Order. The Court has considered the pleadings filed and the applicable law and finds as follows:

Petitioner and Respondent agreed upon and entered a Settlement and Visitation Plan in the best interests of the minor children on April 30, 2009. Petitioner seeks to modify and enforce her visitation rights. Respondent seeks to relieve herself of the final Order entered by the Court on April 30, 2009. Respondent challenges the *in loco parentis* status of Petitioner, seeks an evidentiary hearing, and claims that such finding is not supported by A.R.S. § 25-415(A).

In the April 30, 2009 Order, the Court found that Respondent stands *in loco parentis* as defined by A.R.S. § 25-415(G)(1). Although the Court did not enunciate the precise statutory basis under 415(C) for the determination of *in loco parentis* status for Petitioner, this finding is supported by § 25-415(C)(2). An *in loco parentis* finding may be supported for any person, including persons engaged in a same sex relationship, so long as the requirements are met under § 25-415(C). *Egan v. Fridlund-Horne*, 221 Ariz. 229, 211 P.3d 1213 (App. 2009).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-002344

06/10/2011

Respondent did not seek post-judgment relief of the April 30, 2009 Order. Respondent did not challenge the *in loco parentis* finding within the 14-day time frame for appeal pursuant to Rule 4(a), Superior Court Rules of Appellate Procedure. Further, Respondent did not seek a new trial, did not seek to have the Order reconsidered, and did not request relief from the judgment under Rules 83, 84, or 85 respectively. Since Respondent's post-judgment rights have long since expired or lapsed, further litigation regarding the finding of *in loco parentis* is precluded, because a final, binding judgment was made on the merits of this case on April 30, 2009. Claims involving the same parties and the same core issues and facts are precluded under the doctrine of *res judicata*, and all relevant legal arguments should have been made in the prior case. *Hoff v. City of Mesa*, 344 P.2d 1013 (Ariz. 1959). The ruling on April 30, 2009 is binding upon the parties, and the Court is without authority under these circumstances to set aside the Court's determination that Petitioner holds *in loco parentis* status.

IT IS ORDERED that the request for an evidentiary hearing on the issue of Petitioner's *in loco parentis* status is **DENIED**.

IT IS FURTHER ORDERED that the evidentiary hearing set in this Division on **August 3, 2011 at 1:30 p.m.** previously set by the Court shall be in scope to the issue of modification of reasonable visitation.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.